IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

WRIT PETITION NO.320 OF 2006

SHRI SUBHASH PANDURANG SATERDEKAR,
USGAO, GOA .... PETITIONER

VERSUS

SMT. PARVATI PANDURANG MADVAL
ALIAS USGAONKAR AND 3 ORS. .... RESPONDENTS

CORAM: V.C. DAGA, J.
DATED : 10TH AUGUST, 2006.

Shri J. Godiho, Advocate for the Petitioner.

Shri Iftikar Agha, Advocate for the Respondents.

P.C. :

Heard.

Perused petition.

Rule returnable forthwith.

Shri J. Godinho waives service on behalf of the respondents.

Heard finally by consent of parties.

This petition is directed against the order dated 17.06.2006 passed by the Civil Judge, Senior Division, Ponda in C.M.A no.66/06/D in Regular Civil Suit No.13/05/D filed under Section 151 of Code of Civil Procedure, 1908, whereby the petitioner is praying for

permission to cover portion of the roof of the suit premises which is partly open to sky; may be on account of alleged illegal act of demolition of the roof by the respondents; with further permission to replace one side wooden partition by laterite stones temporarily since he is running his tailoring shop in the said premises. This application came to be rejected by the impugned order. This order is the subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

Learned counsel appearing for the petitioner submits that the trial court has rejected the application filed by the petitioner/plaintiff solely on the ground that the possession of the petitioner/plaintiff is not a lawful possession and that plaintiff has no legal right. In other words, according to the trial court, defendant could not establish that his possession is lawful and legal. It is thus urged that the approach adopted by the court is totally erroneous. That he is in possession of the suit premises for the past more than 10 to 15 years. That he is in settled possession of the premises, as such, as long as he is not evicted from the premises in accordance with law, he is entitled to enjoy peaceful possession of the shop.

Learned counsel further submitted that in order to evict plaintiff from the suit or shop premises the roof has been deliberately damaged by the defendant. This act of the defendant cannot go to prejudice the claim of the plaintiff.

The above submissions made by the learned counsel of the petitioner were countered by the learned counsel of the respondent contending that the defendant has no legal right to seek any assistance from the court, he being a rank trespasser. He further submits that the appeal filed by the defendant challenging the order of injunction is pending before the lower appellate court. In this view of the matter, it was obligatory on the part of the petitioner/plaintiff to make very same prayer before the lower appellate court where the appeal is pending, rather than moving the trial court.

Having heard rival parties it is not in dispute that the petitioner/plaintiff is in settled possession of the suit premises. It is also not in dispute that no steps were taken by the defendant to seek eviction of the plaintiff from the suit premises. It is the plaintiff, who has approached the court to seek protection of the court. The possibility of the attempt on the part of the defendant to indulge in the illegal act complained of cannot be ruled out. The photographs produced on record unequivocally go to show that the roof of the

premises is required to be covered. In absence of any cover on the roof, it will not be possible for the petitioner/plaintiff to possess the suit premises and to run his tailoring shop, which is the primary source of his livelihood.

In the above view of the matter, considering the peculiar facts of this case and looking to the exigency and consensus between the parties, the defendant is permitted to cover the roof his shop premises either with tarpolin or by plastic cloth, with liberty to put tiles thereon. However, no permanent construction shall be done by the petitioner/plaintiff. So far as repairs to the partition wall is concerned he can carry out the same without disturbing the structure of the premises. All this shall be at the cost of the plaintiff himself.

It is made clear that this order shall not create any equity in favour of the plaintiff. This order is being passed without prejudice to the rights of the plaintiff to contest the suit on merits. The trial court shall decide the suit on its own merits without getting influenced by this order.

In the result impugned order is set aside. The petition is allowed to the extent as mentioned above with no order as to costs.

V. C. Daga, J

ap/-